

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0131**

**Sales Tax**

**Monthly Periods of June, July, August, & September 1997**

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**ISSUE**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer, in a letter dated March 30, 1998, protested the negligence penalty regarding taxpayer's failure to file monthly sales tax returns as opposed to quarterly sales tax returns.

The taxpayer is an Indiana manufacturer that manufactures soda pop.

**I. Tax Administration Penalty**

**DISCUSSION**

The taxpayer's employee (the controller) was under the belief that the taxpayer was required to file quarterly. Not until the taxpayer's employee received the initial filing form did the taxpayer's employee realize the taxpayer was required to file monthly. In addition, the startup of the company and the administrative backlog contributed to the erroneous assumption of when the sales tax returns were to be filed.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow

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instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

As the error in filing is the result of inattention to duties, the taxpayer is deemed to be negligent and the protest is denied.

### **FINDING**

The taxpayer’s penalty protest is denied.

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